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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 State of Arizona,) No. CR-09-987-PHX-DGC
10 Plaintiff/Respondent,) Related State Cases:
11 vs.) No. CR2008-139964-001 SE
12 Granville L. Carroll) No. CR2009-103406-001 SE
13 Defendant/Petitioner.) **ORDER**
14)

15 Granville Carroll is awaiting trial or other disposition on state felony charges. *See*
16 *State v. Carroll*, Nos. CR2008-139964, CR2009-103406 (Ariz. Super. Ct. Sept. 28, 2009).
17 Carroll has filed a notice of removal (Dkt. #1) and a petition to remove his criminal actions
18 from state court to this District Court (Dkt. #2).

19 Generally, “a federal court should abstain from interfering with ongoing state criminal
20 proceedings[.]” *Gedo v. Idaho*, No. CV 09-00166-E-BLW, 2009 WL 2848850, at *1
21 (D. Idaho Aug. 28, 2009) (citing *Younger v. Harris*, 401 U.S. 37, 43-45 (1971)). A state
22 prosecution may be removed to federal court under the narrow circumstances set forth in
23 28 U.S.C. §§ 1442-43. Pursuant to 28 U.S.C. § 1446, the federal court must examine the
24 defendant’s removal papers “to determine whether removal is appropriate, and the court has
25 the authority to remand a case, *sua sponte*, for lack of subject matter jurisdiction.” *Id.* (citing
26 28 U.S.C. § 1446(c)(4)).

27 Carroll does not assert that he is a federal officer or a member of United States armed
28 forces. Sections 1442 and 1442a therefore do not apply. *See id.*

1 Section 1443(2) authorizes removal “[f]or any act under color of authority derived
2 from any law providing for equal rights, or for refusing to do any act on the ground that it
3 would be inconsistent with such law.” 28 U.S.C. § 1443(2). The Supreme Court has
4 construed this provision as conferring “‘a privilege of removal only upon federal officers or
5 agents and those authorized to act with or for them in affirmatively executing duties under
6 any federal law providing for equal civil rights.’” *Gedo*, 2009 WL 2848850, at *1 (quoting
7 *City of Greenwood v. Peacock*, 384 U.S. 808, 824 (1966)). Carroll’s case does not fall within
8 that category.

9 Section 1443(1) authorizes removal of a state criminal case where the defendant
10 “is denied or cannot enforce in the courts of such State a right under any law providing for
11 the equal civil rights of citizens of the United States[.]” 28 U.S.C. § 1443(1). “This
12 generally requires a state law or constitutional provision that denies the defendant an
13 opportunity to raise a federal right.” *D’Hollander v. S.F. County Super. Ct.*, No. C 09-519
14 SI (pr), 2009 WL 975428, at *1 (N.D. Cal. Apr. 9, 2009) (citing *Johnson v. Mississippi*, 421
15 U.S. 213, 220 (1975)). Even where a state law does not, on its face, explicitly deny the
16 defendant the opportunity to enforce a federal right, “removal may be appropriate if an
17 ‘equally firm prediction’ can be made that the defendant will be unable to enforce the federal
18 right in state court.” *Id.* (quoting *Johnson*, 421 U.S. at 219-20).

19 Carroll has identified no state law or constitutional provision that denies him the
20 opportunity to raise a federal right, nor has he shown that he will be unable to enforce a
21 federal right in state court. Carroll asserts generally that the state court has denied him the
22 right “to have a fair trial, or receive equal justice under the law.” Dkt. ##1 at 1, 2 at 2. This
23 assertion appears to be based on the denial of his request for change of counsel and certain
24 alleged acts of prosecutorial and judicial misconduct. *See generally* Dkt. ##1-2. “Broad
25 contentions of deprivations of equal protection and due process such as these will not support
26 removal under § 1443(1).” *Gedo*, 2009 WL 2848850, at *1 (citing *Johnson*, 421 U.S. at
27 219).

28 Section 1443(1) is strictly construed against removal as “it is considered an

1 encroachment on state court jurisdiction.” *Johnson v. Washington*, No. C07-0696-MJP, 2007
2 WL 2377141, at *1 (W.D. Wash. Aug. 15, 2007). Because Carroll has not shown that he will
3 be denied the ability to enforce a specific federal right in state court, and because § 1443(1)
4 “has no role in accommodating generalized fears of unfairness in the criminal justice
5 system[,]” *D’Hollander*, 2009 WL 975428, at *2, Carroll’s petition to remove must be
6 denied. *See Oregon v. Hadsell*, No. 08-844-HU, 2008 WL 4534111, at *2 (D. Or. Oct. 3,
7 2008) (denying petition where the defendant asserted general due process and human rights
8 violations).

9 The petition also must be denied as untimely. Absent good cause, the defendant must
10 file the petition to remove “not later than thirty days after the arraignment in State court, or
11 at any time before trial, whichever is earlier[.]” 28 U.S.C. § 1446(c)(1). Carroll’s
12 arraignments took place more than thirty days before he filed the instant petition. *See State*
13 *v. Carroll*, No. CR2008-139964 (Ariz. Super. Ct. Aug. 18, 2008); *State v. Carroll*, No.
14 CR2009-103406 (Ariz. Super. Ct. Jan. 26, 2009). The petition is therefore untimely. *See*
15 *Rosenbalm v. Foulk*, No. C 08-3436 SI (pr), 2008 WL 5391425, at *1 (N.D. Cal. Dec. 15,
16 2008) (denying petition due to the “incurable” procedural deficiency of untimeliness).

17 **IT IS ORDERED:**

- 18 1. Granville Carroll’s petition to remove criminal action from state court to
19 United States District Court (Dkt. #2) is **denied**.
20 2. The Clerk is directed to **remand** this matter to state court.

21 DATED this 5th day of October, 2009.

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David G. Campbell
United States District Judge
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